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January 27, 2022

Senate Committee on Judiciary  
Sen. Dick Sears, Chair

House Committee on Judiciary  
Rep. Maxine Grad, Chair

Vermont General Assembly  
115 State Street  
Montpelier, VT 05633

Re: Miscellaneous Cannabis Establishment Procedures Bills (S.186 and H.548)

Dear Chairs Sears and Grad, and Honorable Members of the Senate and House Committees on Judiciary:

I write to support the pending Miscellaneous Cannabis Establishment Procedures bills (S.186 and H.548) and offer suggestions for improvements intended to ensure that Vermont's nascent cannabis market operates efficiently.

After devoting many years to *pro bono* advocacy for fair and equitable cannabis laws, I launched Silberman PLC's professional cannabis law practice in 2020. I currently represent multiple clients intending to apply for cultivation, manufacturing, wholesale, testing laboratory, and retail licenses pursuant to 7 V.S.A. Chapter 33. While this letter is informed by conversations with these clients as to their needs, plans, and concerns, it does not represent the views of, and is not being provided on behalf of, any particular client, and I do not engage in lobbying on behalf of any person or entity.

### **Prohibited Products**

I strongly support the changes proposed to 7 V.S.A. §868, as drafted. Without these changes, these popular and already-widely available products would only be available on the parallel unregulated market, which weakens the relative strength of the regulated market. Additionally, shifting these products to the regulated market will promote consumer health and safety.

## Packaging Limits

While I support the change proposed to 7 V.S.A. §881(a)(3), I believe it is too narrowly drafted. The 50mg per package limit of §881(a)(3) originated in the House Committee on Government Operations, following my testimony in April 2019. In connection with my testimony, I provided members of the Committee with samples of several different forms of edible cannabis products acquired from stores in Massachusetts. In the ensuing discussion, Rep. Harrison noted that Massachusetts limited edibles to 5mg per serving, rather than the 10mg per serving allowed by S.54 as passed by the Senate. At Rep. Harrison's urging, the bill was amended by the Committee to reduce the serving size from 10mg to 5mg, and a commensurate change was made to §881 to reduce the per-package limit from 100mg to 50mg – in effect, maintain a maximum of 10 servings per package.

I believe §881(a)(3)'s 50mg limit was only intended to apply to *edible* products but was inadvertently drafted overbroadly to apply to “consumable” products. While eliminating the limit for “solid concentrates, oils, and tinctures” does address the problem, it still leaves certain common cannabis products outside of the regulated market. For example, a pre-rolled joint that is composed of flower and THC wax-infused rolling paper would likely run afoul of the 50mg limit unless the joint was exceedingly small.<sup>1</sup>

Thus, I urge the Judiciary Committees to further amend §881(a)(3)(A)(i) as follows:

“(i) cannabis products that are not intended to be consumed via eating consumable, including topical preparations;”

Additionally, I urge the Judiciary Committees to raise the per-package limit for edible products from 50mg to 100mg. Limiting edible packaging to 10 individual servings does not promote either public or consumer health or safety, but instead requires more wasteful and environmentally destructive packaging to be used than would otherwise be necessary. A 100mg per-package limit would be consistent with the vast majority of jurisdictions that have per-package limits.<sup>2</sup>

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<sup>1</sup> A typical pre-rolled joint in regulated markets across the county will contain either one gram or half a gram of cannabis flower; even with moderate 15% potency flower, a half-gram joint would contain 75mg of THC from the flower alone, without accounting for the THC wax-infused paper.

<sup>2</sup> Alaska, Arizona, California, Illinois, Maine, Nevada, New Jersey, and Washington all have a 100mg per package limit on edibles. Michigan allows 500mg per package. Only Oregon and Virginia limit edible packaging to 50mg. The other legal states do not presently have per-package limits.

## **Retailer Packaging**

As currently in effect, 7 V.S.A. §907 requires licensed retailers to adhere to strict packaging rules (good!), but inadvertently fails to give those retailers the actual authority to package the products being sold. Only licensed cultivators, wholesalers, and product manufacturers are empowered to “package” cannabis and cannabis products.<sup>3</sup>

Thus, I urge the Judiciary Committees to amend 7 V.S.A. §907(a)(2) as follows:

(2) transport, possess, package, and sell cannabis and cannabis products to the public for consumption off the registered premises.”

## **Wholesaler Sales to Licensed Cultivators**

Current law<sup>4</sup> defines “cannabis” to include cannabis seeds and clones. As a result, cannabis seeds and clones may only be legally sold by licensed retailers. This creates a substantial risk of a supply chain bottleneck, as licensed cultivators will not be able to legally acquire these critical inputs until October 1, 2022 at the earliest – a full five months after the first cultivator licenses are to be issued. Even after October, requiring cultivators to acquire seeds and clones from retailers imposes substantial unnecessary costs on cultivators, as they will have to pay not only the retailer’s markup, but the 14% excise tax, on seed and clone purchases. An efficient market requires that cultivators be able to acquire seeds and clones on the wholesale market – whether from licensed wholesalers or from other licensed cultivators.

The House Committee on Ways and Means is currently considering a proposal<sup>5</sup> to allow licensed cultivators to sell seeds and clones to other licensed cultivators. The Senate Committee on Agriculture is currently considering a proposal<sup>6</sup> to allow both cultivators and wholesalers to do so. To the extent that the bills before the Judiciary Committees provide an appropriate vehicle for this modest but important change, I urge you to authorize both cultivators and wholesalers to sell seeds and clones to licensed cultivators.

## **Testing Laboratories**

I support the proposed change allowing affiliated ownership and control of more than one testing laboratory license, while maintaining Vermont’s strictest-in-the-nation law against corporate consolidation of the cannabis industry. While the proposed amendment to subsection (C) of 7 V.S.A. §903(d)(3) would permit an applicant to obtain multiple testing

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<sup>3</sup> See 7 V.S.A. §§904, 905, and 906

<sup>4</sup> 7 V.S.A. §831(2)

<sup>5</sup> Contained within DR 22-0546 (concerning the Cannabis Control Board’s proposed fees)

<sup>6</sup> Contained within S.188 (concerning the regulation of small cannabis cultivators as farming)

laboratory licenses, I urge the Judiciary Committees to also amend subsection (A) of such section to permit more than one testing laboratory location under a single testing laboratory license. Allowing multiple locations under a single license would allow for more efficient business operation by testing laboratory scientists than requiring them to apply for multiple single-location licenses (although the option of obtaining multiple licenses will likely be appealing to some applicants).

### **Employee Identification Cards**

I applaud the change proposed to 7 V.S.A. §884 to allow employee portability of their work authorization cards. This pro-labor policy change will empower employees to obtain better wages, benefits, and working conditions by eliminating an artificial and unnecessary barrier to job-switching.

### **Medical Dispensary Parity**

I also applaud the proposed changes related to medical dispensary and integrated licensees. Ensuring that these licensees abide by the same rules and limitations applicable to other licensees in the regulated cannabis market is a matter of fundamental fairness, and closing these apparent loopholes is sound public policy.

\* \* \*

Thank you for your continued efforts to ensure a an equitable and efficient regulated cannabis market for our state. I am available to the Committees and each of their members to answer any questions regarding the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "DS", enclosed within a circular scribble.

Dave Silberman

Cc: Brynn Hare, Executive Director, Cannabis Control Board